

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| MATTHEW HAUGAN, Plaintiff, vs. ROSE MEDINA, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; Defendant. | 4:19-CV-04177-LLP ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS |
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Plaintiff, Matthew Haugan filed a pro se lawsuit pursuant to 42 U.S.C. § 1983 alleging violations of the Eighth Amendment. Docket 1. Haugan is an inmate at the South Dakota State Penitentiary and claims he was sexually assaulted and harassed by a correctional officer. *Id.* at 2-3. He filed a motion to proceed in forma pauperis and provided his prisoner trust account. Dockets 4 and 5. Haugan also filed a motion for subpoena. Docket 3.

MOTION TO PROCEED IN FORMA PAUPERIS

Under the Prison Litigation Reform Act (PLRA), a prisoner who "brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, "[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan." *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Haugan filed a prisoner trust account and the account shows his average monthly deposits for the past six months as \$122.50 and his average monthly balance for the past six months as \$52.42. Docket 5. Based on this information, the Court grants Haugan leave to proceed in forma pauperis. Haugan must pay the initial filing fee of \$24.50, which is 20 percent of his average monthly deposits for the past six months (\$122.50). 28 U.S.C. § 1915(b)(1)(B). Haugan must pay his initial filing fee of \$24.50 by December 20, 2019.

In order to pay the remainder of his filing fee, Haugan must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure.

The clerk of the court will send a copy of this order to the appropriate financial official at plaintiff's institution. Haugan will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. *See In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997). This court will not address Haugan's motion for subpoena (Docket 3) until his initial filing fee has been paid.

Accordingly, it is ORDERED

1. Haugan's motion for leave to proceed in forma pauperis (Docket 4) is granted.
2. Haugan must pay his initial partial filing fee of **\$24.50 by December 20, 2019** or his complaint will be dismissed without prejudice.
3. The institution having custody of Haugan is directed that whenever the amount in Haugan's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Haugan's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED November 15, 2019.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

